

# Exhibit 34



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

NETLIST, INC., ( CAUSE NO. 2:21-CV-463-JRG  
)  
Plaintiff, ( )  
vs. ( )  
SAMSUNG ELECTRONICS CO., LTD., ( )  
et al., ( ) MARSHALL, TEXAS  
( MARCH 28, 2023  
Defendants. ) 9:00 A.M.

---

VOLUME 1

---

PRETRIAL CONFERENCE  
BEFORE THE HONORABLE RODNEY GILSTRAP  
UNITED STATES CHIEF DISTRICT JUDGE

---

SHAWN McROBERTS, RMR, CRR  
100 E. HOUSTON STREET  
MARSHALL, TEXAS 75670  
(903) 923-8546  
shawn\_mcroberts@txed.uscourts.gov

A P P E A R A N C E S

FOR THE PLAINTIFF:        IRELL & MANELLA, LLP -  
LOS ANGELES  
1800 AVENUE OF THE STARS  
SUITE 900  
LOS ANGELES, CA 90067-4276  
(310) 203-7096  
BY:   MR. JASON SHEASBY  
      MS. YANAN ZHAO

McKOOL SMITH, P.C. - MARSHALL  
104 E. HOUSTON ST., SUITE 300  
MARSHALL, TEXAS 75670  
(903) 923-9000  
BY: MR. SAMUEL BAXTER  
     MS. JENNIFER TRUELOVE

FOR THE DEFENDANTS:    FISH & RICHARDSON PC -  
WASHINGTON DC  
1000 MAINE AVE., SW  
SUITE 1000  
WASHINGTON, DC 20024  
(202) 783-5070  
BY:   MR. RUFFIN CORDELL  
      MS. LAUREN DEGNAN  
      MR. BRIAN LIVEDALEN  
      MR. MATTHEW MOSTELLER  
      MR. MICHAEL McKEON

FISH & RICHARDSON, PC -  
SAN DIEGO  
12860 EL CAMINO REAL  
SUITE 400  
SAN DIEGO, CA 92130  
(858) 678-5070  
BY:   DR. FRANCIS ALBERT

FISH & RICHARDSON, PC -  
DALLAS  
1717 MAIN STREET, SUITE 5000  
DALLAS, TEXAS 75201  
(214) 747-5070  
BY:   MR. MATTHEW COLVIN  
      MR. THOMAS REGER

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

FISH & RICHARDSON, PC -  
NEW YORK  
7 TIMES SQUARE, 20TH FLOOR  
NEW YORK, NEW YORK 10036  
(404) 724-2764  
BY: MS. KATHERINE REARDON

GILLAM & SMITH, LLP  
303 SOUTH WASHINGTON AVENUE  
MARSHALL, TEXAS 75670  
(903) 934-8450  
BY: MS. MELISSA SMITH

GILLAM & SMITH, LLP  
102 N. COLLEGE, SUITE 800  
TYLER, TEXAS 75702  
(903) 934-8450  
BY: MR. TRAVIS UNDERWOOD  
MR. TOM GORHAM

OFFICIAL REPORTER: SHAWN M. McROBERTS, RMR, CRR  
100 E. HOUSTON STREET  
MARSHALL, TEXAS 75670  
(903) 923-8546

1 THE COURT: Be seated, please.

2 This is the time set for pretrial matters before the  
3 Court in the case of Netlist, Inc., versus Samsung Electronics  
4 Company, Ltd., et al. This is Civil Case No. 2:21-CV-463.

5 The Court will ask for announcements at this time. What  
6 says the Plaintiff?

7 MS. TRUELOVE: Good morning, Your Honor. Jennifer  
8 Truelove here for Plaintiff. With me today at counsel table,  
9 we have Mr. Jason Sheasby, Ms. Yanan Zhao, and Mr. Michael  
10 Rosen.

11 We are ready to proceed.

12 THE COURT: Thank you.

13 What's the announcement for the Samsung Defendants?

14 MS. SMITH: Good morning, Your Honor. Melissa Smith  
15 on behalf of Samsung.

16 I have many people in the courtroom that have joined me  
17 today, but what I'd like to do is introduce Your Honor to  
18 those that will be arguing today on behalf of Samsung in the  
19 order of argument: Mr. Ruffin Cordell, Mr. Mike McKeon, Ms.  
20 Lauren Degnan, Dr. Frank Albert, Mr. Brian Livedalen, Mr. Matt  
21 Colvin, Mr. Matthew Mosteller, Mr. Tom Reger, and in the back  
22 Ms. Katherine Reardon.

23 Your Honor, we also have a client representative in the  
24 courtroom today, Mr. Michael Nguyen, and we're ready to  
25 proceed, Your Honor.

1 you know, as we're working together, it's just sort of a  
2 sharing of information. It was not obviously accusing anyone  
3 of infringement because we were licensed.

4 THE COURT: All right. Now, if you consider the  
5 Court's prior ruling that up to the termination of the JDLA on  
6 July the 15th, 2020, Samsung was licensed pursuant to the  
7 terms of the JDLA, then we're not talking about willful  
8 infringement prior to July 15th, 2020, under any scenario.

9 Is that your understanding?

10 MS. DEGNAN: You are absolutely right, Your Honor.

11 Could we have slide 27? There's a timeline I think --

12 THE COURT: So really we're talking about 2020 until  
13 suit's filed.

14 MS. DEGNAN: We are. And so let's just jump into  
15 this, what is the good faith defense, because that is, of  
16 course, a reason that would prevent a willful finding here.  
17 And we think no reasonable juror could find we're willful  
18 infringers given -- given this license. So, yes, certainly  
19 through the termination on July 15th, 2020.

20 But I think it's important to recognize is that between  
21 July 15th, 2020, and the final judgment in the California  
22 case, this was a hotly-disputed issue. They were claiming  
23 termination, we were saying it was unlawful, we thought the  
24 termination even if there was a breach, it was not material  
25 justifying termination.

1           So during this period of time, subjective intent was of  
2    -- of Samsung was that we are being wrongfully denied our  
3    license and we're fighting to keep it.

4           And during this period, we should point out that there  
5       was a jury trial, and the jury awarded on December 3rd, 2021,  
6       no damages for this breach that Netlist said happened. That,  
7       again, looks like it's not material. If there's no damages,  
8       then there shouldn't have been a termination.

9 And so we would say that this entire period through at  
10 least the end of the action in California, no reasonable juror  
11 could find that we were -- had the subjective intent to  
12 deliberately infringe because we had a license, we were  
13 fighting to prevent Netlist from taking it away during that  
14 entire period.

15 And I would submit even after, while we appealed what we  
16 would consider a miscarriage of justice, to the Ninth Circuit  
17 we still had a good faith belief that, you know, we have been  
18 denied a license that we bought and paid for, it was a  
19 perpetual license, and that that prevents any sort of  
20 reasonable jury from finding infringement both pre- and  
21 post-suit.

22 THE COURT: Let me go back a minute since you've got  
23 this timeline on the screen.

24 Now, I don't want to limit or backtrack on my prior  
25 statement that, during the period of licensure, Samsung really

1 can't infringe if they're licensed, and if they can't  
2 infringe, they can't willfully infringe.

3 But I have left open the issue for the jury to decide  
4 whether these HBM products are foundry products which would  
5 not be covered by the license and, therefore, could be subject  
6 to infringement. And if those can be subject to infringement  
7 under that construction or scenario, then there's potentially  
8 willful infringement.

9 So as to what's covered by the license prior to 2020, I'm  
10 satisfied that willfulness is out. What's not covered by the  
11 license prior to 2020 is fair game for willfulness. And then  
12 we had the issue of post-July 15, 2020, up until the time  
13 suit's filed.

14 And I understand your arguments about your sense of  
15 justice in the Central District of California and the Ninth  
16 Circuit. You are entitled to your opinions. I'm not sure  
17 that's dispositive on the issue of willfulness or not.

18 MS. DEGNAN: So let me just respond to this issue of  
19 products that were foundry products. And so I think what -- I  
20 think what we're going to see --

21 THE COURT: I can see that fight coming.

22 MS. DEGNAN: I can see --

23 THE COURT: I think everybody in the room can see  
24 that fight coming.

25 MS. DEGNAN: But to clarify, it's not really the

1       rea subjective intent to infringe patents that hadn't even  
2       issued during the negotiations and the license for the JDLA.

3               So you can't tie this activity that they spent many  
4       minutes showing you in the slides to the mens rea requirement  
5       post-termination of the license. So there's nothing that  
6       springs back into effect at that time.

7               And so it's my way of explaining why all the slides you  
8       just looked at, all those evidence, is actually not relevant  
9       to the issue of willfulness because those patents had not  
10      issued. And by the time they had issued, even if there was  
11      some desire to license a patent that was in existence in 2015,  
12      that does not mean we had the subjective intent to infringe  
13      completely different patents in 2020.

14              So I guess I'll leave it with that. That's sort of high  
15      level response to counsel's remarks.

16              THE COURT: All right. Thank you, Counsel.

17              All right. With regard to Document 200 and Samsung's  
18      motion for summary judgment of no willfulness, as to the  
19      period prior to July 15th, 2020, and as to what was covered by  
20      the license granted through the JDLA, the Court grants summary  
21      judgment that there was no willful infringement during the  
22      period that whatever was licensed by the JDLA remained  
23      licensed by the JDLA up until and through or as of July 15th,  
24      2020.

25              Post-July 15th, 2020, the Court finds that there are

1 previously set on the 17th. Go back 10 days and you get to  
2 the 7th. We're now on the 14th. Go back 10 days, and you get  
3 to the 4th. So the first step in that process should be on  
4 the 4th and not the 7th. The second one should follow, what  
5 is it, three days later?

6 MR. CORDELL: Yes, sir.

7 THE COURT: That would put it on the 7th. So 4th  
8 and the 7th instead of 7th and the 10th.

9 All right?

10 MR. CORDELL: Thank you.

11 MR. SHEASBY: Thank you, Your Honor.

12 THE COURT: All right, Counsel. We stand in recess  
13 until tomorrow morning.

14 MR. SHEASBY: Thank you, Your Honor.

15 (The proceedings were concluded at 5:15 p.m.)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25